

## **REMARKS**

### **Status Of Application**

Claims 1-43 are pending in the application; the status of the claims is as follows:

Claims 33 and 37 are withdrawn from consideration.

Claims 1-19, 21-32, and 34-36 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,908,245 to Bost et al. ("Bost").

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Bost in view of Examiner Official Notice ("Examiner Official Notice").

Claims 38-43 are added by amendment with this Amendment.

### **Drawings**

Applicant respectfully requests the Examiner's approval of the formal drawings filed on February 13, 2004. Please note that the original drawings filed in the patent application are "formal" drawings.

### **Claim Amendments**

Claims 4, 5, 25 and 30 have been amended to present those claims for which agreement may be reached. These changes do not introduce any new matter and, in large part, are not necessitated by the prior art and are unrelated to the patentability of the invention over the prior art.

Claims 2, 6, 11, 16, 20, 23, 24, and 26 have been amended to present those claims for which agreement may be reached. These changes are not necessitated by the prior art, are unrelated to the patentability of the invention over the prior art, and do not introduce any new matter.

Claims 38-43 have been added to fix multiple dependency issues created by the amendments referenced above and present those claims for which agreement may be reached. These changes are not necessitated by the prior art, are unrelated to the patentability of the invention over the prior art, and do not introduce any new matter.

**35 U.S.C. § 102(b) Rejection**

The rejection of claims 2, 4-6, 11-13, 16, 23-32, and 34-36 under 35 U.S.C. § 102(b) as being anticipated by Bost, is respectfully traversed based on the following.

The Examiner's telephonic comments were most helpful. As discussed, the tab 24 of Bost is located in the center of the unsectioned opening. (Applicant respectfully notes that 25 in Bost refers to an aperture in tab 24 as opposed to the tab itself. Thus, Applicant believes the Office Action's reference to "tab 25" is meant to refer to tab 24.) Further, the tabs 20 and 21 located at the ends of the unsectioned opening are not capable of placement in the unsectioned opening as contemplated.

The other art identified by Examiner as pertinent also does not disclose a blocking structure of the type contemplated by Applicant located approximately at the end of the unsectioned opening of a sealable bag. For instance, elements 25, 34 of Post are not located approximate the end of the unsectioned opening of a sealable bag. Rather they are located at the center or at least inward of the ends of the unsectioned opening of a sealable bag. Figure 4, for instance, is a cutaway and does not disclose an end of the unsectioned opening of a sealable bag. Applicant has amended claims 4, 5, 26 and 30 to make clear that his blocking structure must be located at least approximate one end of the unsectioned opening of a sealable bag, as contemplated by the specification. In summary, the cited reference does not show or suggest "a blocking structure attached to said sections of substantially airtight material near said unsectioned opening proximate to said end." To anticipate, the cited reference must show, expressly or inherently, every limitation of the claim. MPEP § 2131. Therefore, claim 4 is not anticipated by the cited reference. Claims 2, 6, 11, 12, 16, 20, 23 and 24 are dependent upon claim 4, and thus include every limitation of claim 4. Therefore,

claims 2, 6, 11, 12, 16, 20, 23 and 24 are also not anticipated by the cited reference and are patentably distinct from the prior art.

Claim 5 also includes "a blocking structure attached to said sections of substantially airtight material near said unsectioned opening proximate to said end," which is neither shown nor suggested by the cited reference. Therefore, claim 5 is also not anticipated by the cited reference and is patentably distinct from the prior art. Claims 13, 25, and new claims 38-43 are dependent upon claim 5, and thus included every limitation of claim 5. Therefore, claims 13, 25, and 38-43 are not anticipated by the cited reference and are patentably distinct from the prior art.

Claim 26 includes "a substantially airtight sealing system affixed to said bag for sealing said opening wherein said substantially airtight sealing system has at least one substantially permanently sealed end" and "a spacer attached to said bag near said opening at the substantially permanently sealed end of said substantially airtight sealing system." As noted above, the cited reference does not show or suggest a spacer at an end of the opening. Therefore, the cited reference does not anticipate claim 26 and claim 26 is patentably distinct from the prior art. Claims 27-32 and 34-36 are dependent upon claim 26, and thus include every limitation of claim 26. Therefore, the cited reference does not anticipate claims 27-32 and 34-36 and claims 27-32 and 34-36 are patentably distinct from the prior art.

Accordingly, it is respectfully requested that the rejection of claims 2, 4-6, 11-13, 16, 23-32, and 34-36 under 35 U.S.C. § 102(b) as being anticipated by Bost, be reconsidered and withdrawn.

Applicant has also amended formerly dependent claims 4 and 5 as suggested by Examiner to incorporate the limitations of original claims 1 and 3 and make them independent claims. These amendments result in claims of the same scope as originally presented and now cancelled claims. Only the amendments discussed at the start of this section, clarifying that the claimed blocking structure must be located at least approximate one end of the unsectioned opening of a sealable bag, arguably change the scope of the

pending claims, including claims 4 and 5. As a result of amending claims 4 and 5 to incorporate claims 1 and 3, various dependent claims became redundant and other claims that previously depended from claim 1 depended from claims 4 and 5. Applicant has thus cancelled certain claims and added claims 38-43 to rectify the multiple dependency issues by creating a second set of those claims with multiple dependency issues such that the first set now depends from claim 4 and the second set now depends from claim 5.

Applicant respectfully submits that claim 1, with an amendment clarifying that the claimed blocking structure must be located at least approximate one end of the unsectioned opening of a sealable bag, is patentable over Bost and the art cited as pertinent by Examiner. Applicant, however, wishes to herewith place the application in condition for allowance and thus has incorporated the limitations of claims 1 and 3 into claims 4 and 5 as suggested by Examiner to reach agreement on the allowable claims. Applicant reserves the right to submit and pursue claim 1 in, for instance, a continuation or divisional application.

### **35 U.S.C. § 103(a) Rejection**

The rejection of claim 20 under 35 U.S.C. § 103(a), as being unpatentable over Bost in view of the Examiner's Official Notice, is respectfully traversed based on the following.

Claim 20 is dependent upon claim 4. As noted above, Bost does not show or suggest "a blocking structure attached to said sections of substantially airtight material near said unsectioned opening approximate said end." The material included in Examiner's Official Notice also does not suggest this limitation. To support a *prima facie* case for obviousness, the combined references must show or suggest every limitation of the claim. MPEP § 2143.03. Therefore, the cited references do not support a *prima facie* case for obviousness of claim 20 and claim 20 is patentably distinct from the prior art.

Accordingly, it is respectfully requested that the rejection of claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Bost in view of Examiner Office Notice, be reconsidered and withdrawn.

### **CONCLUSION**

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment increases the number of independent claims by 1 from 4 to 5, but does not increase the total number of claims and does not present any multiple dependency claims. Accordingly, a Response Transmittal and Fee Authorization form authorizing the amount of \$100.00 to be charged to Sidley Austin LLP Deposit Account No. 18-1260 is enclosed herewith in duplicate. However, if the Response Transmittal and Fee Authorization form is missing, insufficient, or otherwise inadequate, or if a fee, other than the issue fee, is required during the pendency of this application, please charge such fee to Sidley Austin LLP Deposit Account No. 18-1260.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

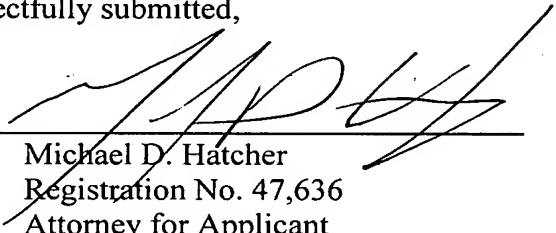
Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee,

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and not submitted herewith should be charged to Sidley Austin LLP Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

By: \_\_\_\_\_

  
Michael D. Hatcher  
Registration No. 47,636  
Attorney for Applicant

MDH/llb:bar  
SIDLEY AUSTIN LLP  
717 N. Harwood, Suite 3400  
Dallas, Texas 75201  
Direct: (214) 981-3428  
Main: (214) 981-3300  
Facsimile: (214) 981-3400  
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